

In re patent application of:
Ralph T. Baker
USSN: Not yet assigned
For: IMPROVED FIRE ESCAPE

REMARKS

I. The § 102 Rejections

In finally rejecting claims 1-4, 9, 22 and 26-32 of the parent of this application, which claims were identical to those presented herein, the examiner cited Baker '166 and stated:

Baker sets forth a fire escape apparatus comprising an upper ring member 4; an elongate mesh tube 6; an exit ring 8; a guide wire 22 affixed to a ground anchor 32; blocks-and-pulleys 30; a diameter between 3 and 4 feet; the use of fire resistant materials including nylon.

(Final Rejection, p. 2)

These assertions are simply not true. Baker '166 nowhere discloses the "blocks-and-pulleys" of the present application. Additionally, Baker '166 does not disclose a plurality of blocks and pulleys, nor specified spacing distances between selected blocks and pulleys within that plurality. Baker '166 discloses a single "snap-on hook" or "snap on ring".

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The law is clear. Because the claimed invention is not identically disclosed in Baker '166, there clearly is no anticipation. For a rejection under 35 U.S.C. §102 to be sustained, a **single prior art reference must contain all elements** of the claimed invention. *W. L. Gore & Associates, Inc., v. Garlock, Inc.*, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983), *Soundscriber Corp. v. U.S.*, 360 F.2d. 954, 960, 148 U.S.P.Q. 298, 301, adopted, 149 U.S.P.Q. 640 (Ct. Claims 1966). Such is not the case here. The §102 rejections are improper.

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II. The §103 Rejections

In the final rejections in the parent of this application, claims which were identical to corresponding claims now present in this case were rejected as follows, all under §103:

- Claims 5-8, unpatentable over Baker '166;
- Claim 10, unpatentable over Baker in view of James '155;
- Claims 11-14, unpatentable over Baker '166;
- Claims 15-17 and 23-25, unpatentable over Baker in view of Reece '747;
- Claim 18, unpatentable over Baker '166 in view of Reece and further in view of Leach '497;
- Claims 19 and 20, unpatentable over Baker in view of Nordtvedt '624; and
- Claim 21, unpatentable over Baker in view of Nordtvedt and further in view of Reece.

Baker '166 has been discussed hereinabove.

James discloses personal exercise apparatus useful in weight lifting, hardly an analogous art. James is irrelevant to the issue of "obviousness" of applicant's claims.

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Reece discloses a rescue chute which is "knit-weaved" from "at least two different" yarns, at least one for providing a thermal barrier. Reece is cited for disclosing a "sleeve upon the tube" and "the use of reinforcing cord members 40". Reece's component 40 is **not** a longitudinal cord; it is "a vertical support rib 40", of an undisclosed material. Nowhere, in **any** reference, is a disclosure or suggestion of the longitudinal reinforcing cord of applicant's claim 23 **intertwining said mesh tube along its length thereof.** Reece does not remotely suggest such a construction.

Leach discloses a fire resistant garment made of fire resistant NOMEX® fabric. NOMEX® is admittedly known to be fire resistant. Claim 18 is dependent upon claim 15, and stands or falls with patentability of claim 15. Leach is otherwise irrelevant.

Nordtvedt '624 discloses an escape apparatus which includes a canopy, in particular a canopy made from KEVLAR®. The examiner stated:

Nordtvedt teaches the use of canopies 29, 30.

...

(Final Rejection, p. 6)

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However, Nordtvedt includes no such specific teachings. In Nordtvedt's disclosure, at col 7, line 14 et seq., Nordtvedt states:

In Fig. 1 and 2, a pair of screen-forming guide means 29, 30 are shown, which are of cloth-formed material and which are fastened below to the connecting means 22. ...

Nordtvedt's system includes a series of wall openings along a building wall and a mesh stocking extending along the wall which has a series of annular bracing rings for bracing the stocking. (Nordtvedt '624, Abstract). To the extent that Nordtvedt's guide means 29, 30 can be considered "canopies" at all, it is clear that Nordtvedt's apparatus has none of the essential components of applicant's apparatus, e.g., the single entry ring member, which member is detachably anchored to the building, a plurality of supporting, spaced-apart blocks-and-pulleys riding on a guide wire, etc. Taken as a whole, as required by §103, Nordtvedt is irrelevant to patentability of applicant's apparatus.

For each of these references, the examiner has failed to document, by page and line number, any *showing* of a specific teaching or motivation to combine these references to reach applicant's invention. That is legal error.

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In support of the final rejections in the parent of this case, in a section titled "Response to Amendment", the examiner states:

As concerns remarks pertaining to the block-and-pulley (means) of Baker '166, the examiner takes the position that members 30 of Baker perform the same function as a block-and-pulley (means) and thereby qualify as an equivalent "means".

(Final Rejection, p. 7)

Thus, to support **both** the §102 and §103 rejections, the examiner concludes, with no citation of authority, that "block-and-pulley (means)" are *identical in function* to a "snap-on hook", with no regard given to the clear advantages provided by the plurality of block-and-pulley support means, and no regard given to optimum spacings between such supports, both disclosed and claimed by applicant herein.

That also is clear error, both as a matter of fact and as a matter of law.

As a matter of indisputable fact, a plurality of spaced-apart blocks and pulleys, affixed at designated intervals along the tube and riding upon the guide cable is neither a "snap-on hook" nor is

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remotely suggested by a "snap-on hook". In addition, **nowhere**, in any of the plethora of references, is there disclosed an additional longitudinal reinforcing cord, extending the length of the escape tube and intertwining the tube mesh. Nowhere is any disclosure of at least two cords of the mesh tube connecting the tube and the longitudinal reinforcing cord through each supporting block of the plurality of blocks-and-pulleys.

The examiner simply avoids these specific and indisputable facts and draws wholly unsupported conclusions.

In *Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361; 56 USPQ 2d 1065 (Federal Circuit, 2000), the Federal Circuit recently stated:

We "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." [omitting cases]

Our case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a **showing** of a teaching or motivation to combine the prior art references [omitting cases]

(p. 1372, emphasis added)

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In *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002), the Federal Circuit just last year expressly held that reliance on alleged "common knowledge and common sense" by the PTO **did not fulfill** the PTO's **obligation** to **cite references** to support its conclusions. *Id.* at 1344, 61 USPQ2d at 1434. An examiner's conclusory statements do not adequately address the issue of motivation to combine. *Id.* Instead, the PTO **must document its reasoning on the record** to allow for accountability. *Id.*, at 1345, 61 USPQ2d, at 1435. This mandated documentation also allows for effective judicial review. *Id.*

The examiner draws unsupported conclusions that applicant has merely provided a "duplication of parts", that it is "not inventive to discover the optimum or workable values", and that what applicant has invented is a "matter of design choice". In doing so, this examiner has complied with **none of the mandates required as a matter of law** by *Ecolochem, Lee, Gore and Sernaker, supra*.

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To the contrary, nonduplication of parts, providing engineering advantages, or producing unexpected results have **never** been criteria required **for** patentability. Novelty and nonobviousness are what are required **for** patentability. What **is** required **to deny** patentability is a suggestion, teaching or motivation apparent in the references of record to combine them to achieve applicant's invention. No such suggestions or citations are provided here. That is legal error. *Ecolochem*, Lee, *supra*.

In support of an obviousness rejection, knowledge "clearly present in the prior art" must be shown. *In re Scheckler*, 438 F.2d 999, 168 U.S.P.Q. 716 (CCPA 1971); *In re Sernaker*, 217 U.S.P.Q. 1, 6 (Fed. Cir. 1983). The Court in *Sernaker*, *supra*, said:

The lesson of this case appears to be that prior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from their teachings.

(*Sernaker*, p. 6)

As set forth hereinabove, there is no disclosure or remote suggestion in Baker '166 of a plurality of blocks-and-pulleys installed at defined intervals along the guide wire.

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CONCLUSION

Under the facts of this case and the law, all of applicant's claims 1-32 are allowable. Early allowance is urged.

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